

REMARKS

I. Formalities/ Examiner Interview Summary

Claims 1-16, 29, and 31-40 are in the subject patent application. None of the claims are amended herein.

On January 9, 2008, George Chen and Walter Opaska, attorneys for the Applicant, conducted an interview with Examiner Vanel Frenel. During this interview, Mr. Chen, Mr. Opaska, and Examiner Frenel discussed claim 40 and the references cited in the Office Action. Applicant thanks Examiner Frenel for his time and help on this matter.

II. Claims 1-16, 29 and 31-40 Are Allow over the 35 U.S.C. §103 Rejection

Applicant asserts claims 1-16, 29 and 31-40 under 35 U.S.C. §103(a) patentable over U.S. Patent Publication No. 2002/0184148 to Kahn et al. (hereinafter "Kahn") in view of U.S. Patent Publication No. 2002/0049617 to Lencki et al. (hereinafter "Lencki") and in further view of U.S. Patent Publication No. 2001/0037214 to Raskin et al. (hereinafter "Raskin") for the reasons discussed below.

A. Claim 40 Is Allowable Over Kahn, Lencki and Raskin

For the sake of consistency with the Examiner Interview, Applicant will first discuss independent claim 40. Claim 40 overcomes the rejection under 35 U.S.C. §103(a) as being allegedly obvious over the combination of Kahn, Lencki, and Raskin because this combination does not teach or suggest every limitation of claim 40.

Claim 40 requires, in part: (a) “establishing a year-to-year accruable health spending account” and (b) “establishing a flexible spending account for the benefit of the member.” Kahn, Lencki, and Raskin, alone or in combination, fail to teach or suggest a year-to-year accruable health spending account or the combination of these two limitations of claim 40.

Kahn teaches a payroll service where the employee can commit to “an optional one-year fixed deduction to a pre-tax medical plan, which the Employer can match in a medical savings account cafeteria plan.” Paragraph 0156 of Kahn (internal quotations omitted). Nowhere within the four corners of Kahn is a year-to-year accruable health spending account taught or suggested, as required by claim 40.

Lencki teaches using a flexible saving account (FSA). Paragraph 0193 of Lencki. However, FSAs are not accruable year-to-year. Specifically, “FSA rules force the participant to predict exactly his healthcare expense for a 12-month period and punish the participant, through the use-it-or-lose-it rule, for spending less than predicted so the incentive is to spend all the money before the end of the year.” Paragraph 005 of Applicant’s Specification. That is, money contributed to an FSA and not used for medical expense during that same year is lost; the participant cannot carry over the money in the FSA for medical expenses during subsequent years. Accordingly, Lencki does not teach a year-to-year accruable health spending account, as required by claim 40.

Raskin teaches an account with two parts: (a) a Previous Year Amount Available, and (b) a Current Year Amount Available. The Previous Year Amount Available can be used to only reimburse expenses from the previous year and not the current year. Paragraphs 037, 043, and 44. The Current Year Amount Available can be used to only reimburse a claim from the current

year and not the previous year. Paragraphs 041 and 042. Consequently, Raskin fails to teach a year-to-year accruable health spending account, as required by claim 40.

Furthermore, compliance with Section 105 of Internal Revenue Code of 1986 does not govern whether an account is a year-to-year accruable health spending account. Instead, Section 105 of the Internal Revenue Code of 1986 governs whether insurance payments are considered gross income for the insured person. For example, the relevant portion, subsection b, of Section 105 of Internal Revenue Code of 1986 states, in part, “gross income does not include amounts [received by an employee through accident or health insurance for person injuries or sickness] if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care.” See Exhibit A: Section 105 of Internal Revenue Code of 1986. That is, compliance with section 105 indicates the money paid to reimburse medical care expenses are not considered part of the gross income of the recipient by the Internal Revenue Service.

Furthermore, claim 40 also requires, in part, “withdrawing a first sum from the flexible spending account to reimburse the member for a medical expense; [and] withdrawing a second sum from the year-to-year accruable health spending account to reimburse the member for a remainder of the medical expense when the first sum is less than the medical expense.” Neither Kahn nor Lencki teach these steps because neither reference teaches a method of paying out-of-pocket health care expenses using a flexible spending account and a year-to-year accruable health spending account.

Raskin does not provide the missing teachings of Kahn and Lencki. Raskin teaches a “Previous Year Amount Available” to pay only claims from the previous year and a “Current

Year Amount Available” to pay only claims for the current year. See Paragraphs 0037, 0041-0044, and 0046 of Raskin. Thus, Raskin does not teach withdrawing a first sum from the flexible spending account to reimburse the member for a medical expense and withdrawing a second sum from the year-to-year accruable health spending account to reimburse the member for a remainder of the medical expense when the first sum is less than the medical expense, as required by claim 40.

Finally, claim 40 requires, in part, “carrying forward any unused balance in the year-to-year accruable health spending account for reimbursing the member for qualified medical expenses incurred during a subsequent year.” The combination of Kahn, Lencki, and Raskin also fail to teach or suggest this limitation. Kahn teaches an optional one-year fixed deduction to a pre-tax medical plan. As discussed above, Lencki teaches an FSA, which is not accruable year-to-year. Raskin teaches an account where “[a]t the end of a plan year, the funds remaining for the current year, if any, are transferred to the ‘Previous Year Amount Available’ to honor claims filed after the [previous] plan year [using funds accrued during the previous plan year]” and “at some employer elected date, all non-zero ‘Previous Year Amount Available’ fields are reduced to zero.” Paragraph 0046 of Raskin. See also Paragraph 0037 of Raskin.

In light of the foregoing remarks, Applicant respectfully submits that Kahn, Lencki, and Raskin, either alone or in combination, do not teach or suggest all of the limitations of independent claim 40. Applicant therefore respectfully requests allowance of independent claim 40.

B. Claim 1 Is Allowable Over Kahn, Lencki and Raskin

Claim 1 requires, in part, “calculating the directed contribution amount to the year-to-year accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 by subtracting either the selection allocation or the option cost from the defined contribution value.” The combination of Kahn, Lencki, and Raskin fail to teach or suggest this limitation.

Kahn teaches a payroll service with an optional one-year fixed deduction to a pre-tax medical plan, which teaches away from the year-to-year accruable health spending account required by claim 1. Lencki teaches a health care benefits system where the employer contributes a specific dollar amount and where the employee is allowed to select benefits and options from benefits package categories 20, shown in FIG. 2 of Lencki. Allocating a portion of the contribution by the employer to a year-to-year accruable health spending account is not one of the benefits package categories 20 of Lencki. Lencki does teach FSAs, but FSAs are not year-to-year accruable, as required by claim 1.

Raskin teaches a health spending account where “[o]n the last day of the plan year, the ‘Current Year Amount Available’ is transferred to the ‘Previous Year Amount Available.’ At some employer elected date, all non-zero ‘Previous Year Amount Available’ fields are reduced to zero.” Paragraph 0046 of Raskin. Therefore, according to Raskin, the Previous Year Amount Available can be used to reimburse expenses from the previous year and not the current year. Consequently, Raskin fails to teach a year-to-year accruable health spending account, as required by claim 1.

In light of the foregoing remarks, Applicant respectfully submits that Kahn, Lencki, and Raskin, either alone or in combination, do not teach or suggest the limitation of calculating the directed contribution amount to the year-to-year accruable health spending account compliant with Section 105 of Internal Revenue Code of 1986 by subtracting either the selection allocation or the option cost from the defined contribution value, as required by independent claim 1. Accordingly, Applicant respectfully requests the allowance of independent claim 1.

C. Claims 2-16 Are Allowable Over Kahn, Lencki and Raskin

Claims 2-16 depend, directly or indirectly, on independent claim 1. Dependent claims must be construed to include all of the limitations of the claims from which they depend, as required by 37 C.F.R. 1.75(c) and M.P.E.P. 608.01(n). The deficiencies of the combination of Kahn, Lencki, and Raskin in relation to claim 1 are discussed above. Therefore, combination of Kahn, Lencki, and Raskin do not teach or suggest claims 2-16 for at least the same reasons as listed earlier for claim 1, as well as for their own limitations.

For example, claim 5 requires, in part, “presenting a predicted contribution amount for the year-to-year accruable health spending account.” As discussed above, none of Kahn, Lencki, or Raskin teach or suggest a year-to-year accruable health spending account, and thus cannot teach or suggest presenting a predicted contribution amount for the year-to-year accruable health spending account. Accordingly, Applicant respectfully requests the allowance of claim 5 for at least this additional reason.

Claim 7 requires, in part, “calculating a predicted contribution amount for the year-to-year accruable health spending account by subtracting the option cost from the defined contribution value.” As discussed above, none of Kahn, Lencki, or Raskin teach or suggest a

year-to-year accruable health spending account, and thus cannot teach or suggest calculating a predicted contribution amount for the year-to-year accruable health spending account by subtracting the option cost from the defined contribution value. Accordingly, Applicant respectfully requests the allowance of claim 7 for at least this additional reason.

Claim 14 requires, in part, “transferring a first amount from an employer funded account to the year-to-year accruable health spending account for the member, the first amount substantially equivalent to the directed contribution amount determined in said determining step.” As discussed above, none of Kahn, Lencki, or Raskin teach or suggest a year-to-year accruable health spending account for a member and thus cannot teach or suggest transferring a first amount from an employer funded account to the year-to-year accruable health spending account. Accordingly, Applicant respectfully requests the allowance of claim 14 for at least this additional reason.

Claim 15 requires, in part, “withdrawing a sum from the year-to-year accruable health spending account to reimburse the member for a medical expense.” As discussed above, none of Kahn, Lencki, or Raskin teach or suggest a year-to-year accruable health spending account for a member and thus cannot teach or suggest withdrawing a sum from the year-to-year accruable health spending account to reimburse the member for a medical expense. Accordingly, Applicant respectfully requests the allowance of claim 15 for at least this additional reason.

Claim 16 requires, in part, “withdrawing a first sum from a flexible spending account to reimburse the member for a medical expense; and withdrawing a second sum from the year-to-year accruable health spending account to reimburse the member for the medical expense when the first sum is less than the medical expense.” The combination of Kahn, Lencki, and Raskin do

not teach or suggest withdrawing a first sum from a flexible spending account and withdrawing a second sum from the year-to-year accruable health spending account. Kahn teaches a one-year fixed deduction to a pre-tax medical plan. Lencki does disclose using an FSA to reimburse medical expenses, but FSAs are not accruable year-to-year. Raskin, as discussed above, does not teach a year-to-year accruable health spending account. Nowhere within the four corners of Kahn, Lencki, or Raskin is using a combination of a flexible spending account and a year-to-year accruable health spending account to reimburse a member for a medical expense taught or suggested. Accordingly, Applicant respectfully requests the allowance of claim 16 for at least this additional reason.

D. Claim 29 Is Allowable Over Kahn, Lencki, and Raskin

Claim 29 requires, in part, “carrying forward any unused balance in the accruable health spending account for reimbursing the employee for qualified medical expenses during a subsequent year.”

As discussed above, Kahn and Lencki do not teach a year-to-year accruable health spending account and, thus, do not teach or suggest carrying forward any unused balance in the accruable health spending account for reimbursing the employee for qualified medical expenses incurred during a subsequent year, as required by claim 29.

Raskin does not provide the missing teaching of Kahn and Lencki. As also discussed above, Raskin teaches “[a]t the end of a plan year, the funds remaining for the current year, if any, are transferred to the ‘Previous Year Amount Available’ to honor claims [for the previous year] filed after the [previous] plan year.” Paragraph 0037 of Raskin. Accordingly, Raskin does not disclose carrying forward any unused balance in the accruable health spending account for

reimbursing the employee for qualified medical expenses during a subsequent year, as required by independent claim 29.

Accordingly, Applicant respectfully submits that Kahn, Lencki, and Raskin, either alone or in combination, do not teach or suggest independent claim 29. Applicant therefore respectfully requests allowance of independent claim 29.

E. Claims 31-38 Are Allowable Over Kahn, Lencki, and Raskin

Claims 31-38 depend, directly or indirectly on independent claim 29. Dependent claims must be construed to include all of the limitations of the claims from which they depend, as required by 37 C.F.R. 1.75(c) and M.P.E.P. 608.01(n). The deficiencies of the combination of Kahn, Lencki, and Raskin in relation to claim 29 are discussed above. Therefore, combination of Kahn, Lencki, and Raskin do not teach or suggest claims 31-38 for at least the same reasons as listed earlier for claim 29, as well as for their own limitations.

For example, claim 31 requires, in part, “crediting to the accruable health spending account a directed contribution amount equal to the defined contribution less the portion allocated for payment of the premium charge.” As previously stated, Lencki does not teach or suggest an accruable health spending account and, thus, cannot teach or suggest crediting to the accruable health spending account a directed contribution amount equal to the defined contribution less the portion allocated for payment of the premium charge. As previously discussed, neither Kahn nor Raskin provide the missing teachings of Lencki. Accordingly, Applicant respectfully requests the allowance of claim 31 for at least this additional reason.

Claim 37 requires, in part, “wherein said debiting the accruable health spending account comprises the use of a debit card or credit card associated with the accruable health spending

account.” Kahn teaches a system that allows the employer to provide funds to cover the employer’s payroll. Nowhere within the four corners of Kahn is there a teaching or suggestion that debiting the accruable health spending account comprises the use of a debit card or credit card associated with the accruable health spending account, as required by claim 37. Neither Kahn nor Raskin provide the missing teachings of Lencki. Accordingly, Applicant respectfully requests the allowance of claim 37 for at least this additional reason.

Claim 38 requires, in part, “[t]he accruable health spending account is not individually funded but instead is associated with a pooled fund maintained by the employer.” Kahn teaches a system where the employer’s bank can transmit a wire to a bank to cover the payroll. Nowhere within the four corners of Kahn does it teach that the accruable health spending account is not individually funded but instead is associated with a pooled fund maintained by the employer, as required by claim 38. Neither Lencki nor Raskin provide the missing teachings of Kahn of associating the accruable health spending account with a pooled fund maintained by the employer. Accordingly, Applicant respectfully requests the allowance of claim 38 for at least this additional reason.

F. Claim 39 Is Allowable over Kahn, Lencki and Raskin

Claim 39 requires, in part, “calculating a contribution amount to be paid by the employer to a year-to-year accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 by subtracting from the defined contribution amount the dollar amount of the contribution of the employer to each insurance option selection received for the member; and transferring the calculated contribution amount to the year-to-year accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 for the member.”

Neither Kahn nor Lencki teach or suggest these limitations. As previously discussed, Kahn and Lencki fail to teach a year-to-year accruable health spending account. Raskin fails to provide the missing teachings. As discussed above, Raskin fails to teach year-to-year accruable health spending account. Accordingly, Raskin cannot teach: calculating a contribution amount to be paid by the employer to a year-to-year accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 by subtracting from the defined contribution amount the dollar amount of the contribution of the employer to each insurance option selection received for the member; and transferring the calculated contribution amount to the year-to-year accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 for the member, as required by claim 39.

In light of the foregoing remarks, Applicant respectfully submits that Kahn, Lencki, and Raskin, either alone or in combination, do not teach or suggest independent claim 39. Accordingly, Applicant respectfully requests allowance of independent claim 39.


CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. In light of the remarks set forth above, Applicant respectfully requests reconsideration and allowance of all of the pending claims.

Applicant encloses all fees believed due in connection with this Response to Outstanding Office Action, and the Petition to Extend Time under 37 C.F.R. §1.136(a). However, the Commissioner for Patents is hereby authorized to charge any additional required fees necessitated by these filings, or credit any overpayment, to Account No. 02-4467.

If matters can be discussed by telephone to further the prosecution of this application, Applicant invites Examiner Frenel to call the undersigned attorney at the Examiner's convenience.

Respectfully submitted,



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